SUPREME COURT OF THE UNITED STATES.

No. 365.

THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY, PLAINTIFFS IN ERROR,

vs.

FREDERICK STEIN.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Fredererick Stein, plaintiff, and the Washington and Georgetown Railroad Company, defendant, a manifest error hath happened to the great damage of the said defendant, as by its complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable S. P. Chase, Chief Justice of the United States, this 26th day of May, in the year of our Lord 1866, and of the independence of the United States the 90th.

[L. S.] R. J. MEIGS, *Clerk.*

To Frederick Stein:

DISTRICT OF COLUMBIA, *to wit:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein the Washington & Georgetown Railroad Company is plaintiff, and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia, May 26, 1865.

D. K. CARTTER,
Chief Justice.

We acknowledge service of this citation, May 26, 1866.
FREDERICK SCHMIDT & WM. F. MATTINGLY,
Atty's for Plff.

2

3 DISTRICT OF COLUMBIA, *to wit:*

As commanded by the foregoing writ of error, I, Return J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify and transmit to the Supreme Court of the United States a true copy of the record and proceedings mentioned in said writ of error, with all things touching the same, which copy is hereto annexed.

In testimony whereof I have caused the seal of the said supreme court of the District of Columbia to be hereunto affixed, at the city Washington, this 26th day of May, 1866.

[L. S.] R. J. MEIGS, *Clerk.*

4 *Declaration.—Filed* 31 *Dec.*, '64.

In the supreme court of the District of Columbia, the 30th day of December, A. D. 1864.

FREDERICK STEIN, plt'ff,
vs.
THE WASHINGTON AND GEORGETOWN Railroad Company, def't. } At Law.—No. 1,422.

The plaintiff sues the defendant, a company incorporated by act of Congress, for that whereas the said plaintiff did, on or about the third day of September, eighteen hundred and sixty-four, take passage and ride on a certain car belonging to said defendant, in the city and county of Washington, in the District of Columbia, and the said defendant did then and there so carelessly, improperly, negligently, and unskilfully drive and manage the said car, that by means of a beam, stick, staff, or piece of wood, placed by the said defendant across the said car, the two legs of the said plaintiff became and were then and there fractured and broken, and the said plaintiff was then and there otherwise greatly hurt, bruised, and wounded, and was for a long time and is now suffering and hindered and prevented from performing and transacting his necessary affairs
5 and business to the damage of the said plaintiff of ten thousand dollars, wherefore he brings this suit.

FR. SCHMIDT,
For Plaintiff.

Summons.—Issued 31*st Dec.*, 1864.

In the supreme court of the District of Columbia, the 31st day of Dec., 1864.

FREDERICK STEIN, plaintiff,
vs.
THE WASHINGTON AND GEORGETOWN Railroad Co., defendant. } At law.—No. 1,422.

The President of the United States to the marshal of said district, greeting:

Summon the defendant in the above-entitled case to appear in said

court on or before the first special term thereof, occurring twenty days after service of this writ, and answer the declaration herewith served; and warn him that on default of so doing the plaintiff may proceed to judgment and execution at the trial term of said court next after said service. And do you return this writ into the clerk's office immediately after service, so indorsed as to show the
6 time and manner of executing it; and if you cannot serve it within six months, the day of its issuance exclusive, then return it into said office for renewal.

Witness:

D. K. CARTTER,
Chief Justice of said Court.
R. J. MEIGS, *Clerk.*

SCHMIDT, *C.*

NOTE.—That the special terms of the court commence on the first Tuesday of every month, except May, in which month they commence on the third Monday, and August, in which month there is no term of the court; and that the trial terms of the court commence on the first Tuesday of February Monday third of May, and first Tuesday of November, when final judgments may be taken and execution awarded.

Marshal's indorsement.

Served copy of this summ'ns on G. S. Gideon, pr. of the road.
W. H. LAMON,
Marshal.

Jan'y 6th, 1865.

Plea.—Filed 27 Jan., '65.

FREDERICK STEIN
vs.
WASH. AND GEORGETOWN R. R. Co. } At law.—No.

The defendants say they are not guilty.
J. CARTER MARBURY,
Atty. for Deft.

7 *Issue joined.—Filed 9th June, 1865.*

In the supreme court of the District of Columbia, June 9th, 1865.

FRED'K STEIN
vs.
WASH. & GEO. R. R. Co. } At law. No. 1,442.

The plaintiff joins issue upon the defendant's plea.
FR. SCHMIDT,
Att'y for Plaintiff.

Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court for said District, commencing the first Tuesday of February, 1866, in pursuance of the rule of court.

FRIDAY, *March* 16, 1866.

The court resumes its session according to adjournment, Chief Justice Cartter, presiding.

FREDERICK STEIN
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } 1,422, law.

Come, as well the plaintiff, by his attorneys, Messrs. Schmidt and Mattingly, as the defendant, by its attorneys, Messrs. Marbury
8 and Bradley, and thereupon comes a jury of good and lawful men of the District of Columbia, to wit: John P. Murphy, Charles W. Pettit, David W. Westerfield, Nicholas Acker, Edwin H. Edelin, William C. Harper, George Klotz, Henry Wingate, William O'Neale, Uriah B. Mitchell, John Reynolds, and Joseph A. Gill, who, being duly sworn to try the issue above joined, are respited till the meeting of the court to-morrow.

TUESDAY, *March* 20, 1866.

The court resumes its session according to adjournment, Chief Justice Cartter, presiding.

FREDERICK STEIN
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } 1,422, law.

And now again come here the parties aforesaid, by their attorneys aforesaid, and the same jury, to whom the case was submitted yesterday; and the said jury upon their oath say that they find the issue above joined in favor of the plaintiff, and they assess his damages, by the reason of the premises, at thirty-two hundred dollars, besides costs. And thereupon the defendant moves that the
9 verdict be set aside, and a new trial be awarded upon exceptions to the ruling of the court, settled and filed, which motion the court ordered to be heard, in the first instance, in the general term.

Bill of exceptions.

FRED. STEIN
vs.
WASH'T'N & GEO'T'N R. R. CO. }

It being admitted, on the trial of this cause that the defendant was and is a duly incorporated company, as alleged, the plaintiff, to maintain the issue on his part joined, gave evidence tending to show

that on the 3d September, 1864, he was a resident of Prince George's co., State of Maryland, but was at work in the U. S. arsenal in this city; that he had been enrolled for military duty both in Md. and this city; that on said 3d Sept., on his return from the office of the provost marshal, he got on one of the cars of defendant, on Pennsylvania avenue, between 6th and 7th streets, in the city of Washington, to go to the navy yard in said city; that he got directly on the front platform of said car; that there were a great many passengers, not certain that it was not entirely full; that he had with him
10 a pitch fork and umbrella, and that, whilst on said platform, said conductor came to him and collected his fare, six cents, and did not tell him to come inside or speak a word to him; that a portion of the time he was sitting on a long carpet-bag belonging to a soldier, who was on said platform, and got off at the Baltimore depot; that his position on said platform was to the right of the driver, and that he was either sitting or standing when he received an injury while the car was in motion, by which both of his legs were badly broken; that there was no other passenger on said platform besides said plaintiff; that when said plaintiff got on said car, there was lying on the front platform thereof a piece of timber about 5 inches square, which "stuck out" about a foot and a half on the same side of the car on which said plaintiff was, and was between him and the dash; that as the car was passing through the north gate of the Capitol grounds that piece of timber struck against the gate post, and was forced back against plaintiff's legs, whereby they were both broken, and the plaintiff fell forward over the
11 dash; that persons were in the habit of riding on the front platforms of the cars, and it is notorious that for the last two years the front platforms of cars have been frequently crowded with passengers; that at and about the time of said injury the conductors of said cars endeavored to make all negroes ride upon the front platforms; that the space between the edge of said car and said gateway was very narrow, not more than 5 or 6 inches; that the conductor and driver of said car had been in the employment of said company ever since it commenced running, some three years prior to the time of said injury, and had passed through said gateway twelve times a day with said car; and he gave further proof to show the extent of the injury and the damages he had sustained by the collision, and rested.

And thereupon the defendants, to maintain the issue on their part joined, offered and read in evidence the printed regulations of said company, as follows:

"*Rules for conductors.*

"SECTION 15. He shall never allow persons to ride on the platform when there is room inside."

12 "SECTION 17. All articles of a bulky nature, occupying space, will be charged fare, and must be carried on the front platform, and in no case must any article be hung on the handles of the brakes. When an article is deposited on the platform, the con-

ductor must distinctly inform the owner thereof that it is at his own risk."

And gave evidence to show that these regulations were publicly and commonly known in the city of Washington; that on the 3d of Sept., 1864, there was put on the front platform of the car, at 7th street west, to be carried to the navy yard as freight, (the owner not being in the car,) a lever jack, used for raising the wheels of carriages, composed of two sticks of wood united together, and about 5 or 6 feet in length, and this jack was lying on the said platform, close to the dash, when plaintiff got on the car, and there was no other stick or timber there on that platform; that plaintiff got on the car between 6th and 7th streets, to go to the navy yard; that he got on the back platform, and the conductor told him to go into the car, and there was then room for him to get a seat; that plaintiff had with him a
13 pitchfork, and an umbrella or stick, and passed directly through the car, and out of the front door and took his place on the front platform; and that he took a seat on the front platform with his feet on the step on the right-hand side, the driver standing about the middle of the platform, and the said "lever jack" lying between them and the front dash; that the conductor received his fare while plaintiff was so sitting and then told him to come inside the car, and also told him not to sit on the step; that the conductor and driver were both experienced and had been long in the employment of the company; that the car was about 8 feet wide, and had to pass through the government gates at the north side of the Capitol grounds, and the car in passing came within a few inches of the gate post on the right-hand side of the car; that in approaching the said gate the end of the said lever jack projected a few inches beyond the platform on the right-hand side of the car and struck against the gate post; and was thus thrown back against the legs of the plaintiff as he sat on the said platform, next to the corner of the car, the seat being
14 so low that his knees were higher than the platform, that if the plaintiff had been standing up the said "lever jack" would not have struck; that if it had not been for the plaintiff's legs the "lever jack" would have struck the corner of the car and would there have been stopped; that the car approached and passed through the gate at a walk, and was not stopped, or its motion interrupted by said jack striking said gate post against which it scraped.

D. R. CARTTER,
Chief Justice.

Defendant's 1st prayer.

If from the whole evidence aforesaid, the jury shall find that the defendants are an incorporated company running a horse railroad in the city of Washington from Georgetown to the navy yard; and by the regulations of said company passengers are prohibited from riding on the front platform of the cars; and also that baggage, parcels, and articles of freight are by the same regulations carried on the front platform; and the said rules are commonly known and under-
15 stood in said city, and if they shall further find that on the 3d

September, 1864, a certain implement called a lever jack was put upon the said front platform of one of defendant's cars as freight, and afterwards and while the said car was on its transit to the navy yard, with said jack on said platform, the plaintiff got on the said car, and took his place on said platform while there was room in the car for him, and sat on said platform with his feet on the step thereto, and while the said car was passing thro' a gateway on the said road, one end of said "jack" struck the gate post, and the jack was thereby thrown back upon and against the legs of said plaintiff, by means thereof his legs were broken; and if they shall further find that the said car was then proceeding at a walk, and if the plaintiff had been standing up the injury would not have occurred to him, then the accident and injury are to be attributed to want of ordinary care on the part of the plaintiff, and he is not entitled to recover in this action.

Refused by the court. Exceptions reserved.

16 *Deft's second prayer.*

If from the whole evidence, the jury shall find the injuries of which the plaintiff complains was caused in whole or in part by the plaintiff's negligence and want of ordinary care; that the plaintiff was notified by the conductor not to sit on the platform with his feet on the step, and if he remained and received the injury while so sitting, and if he had been standing up on the platform it would not have happened, then the plaintiff is not entitled to recover, (A,) provided it appears from the evidence that the plaintiff was advised of the condition of the road with reference to the gate post.

Given as far as the letter (A) but with the qualification following that letter; and defendants pray leave to except to the said qualification.

17 The court instructs the jury:

That if from the evidence they shall find the plaintiff by his carelessness was out of his proper place in the car, and the injury he received was superinduced by this act he cannot recover.

If the injury was caused by reason of the laches or carelessness of the defendant by reason of acts on their part foreign to the act of plaintiff, the company is liable.

But there is an open question as to the legal occupation of the platform.

The regulations of the company, although addressed to the conductors and other officers, are binding upon the public, if brought home to the knowledge of the public. And if the conductors lived up to and enforced them they would be notice to the passengers. But if they permitted passengers indiscriminately to occupy the platform or the inside of the cars at their option, they do not bind the public.

If a man takes an outside place he takes it subject to all the ordinary risks of such a position provided he can get an inside place.

But it is only the ordinary risks of the more exposed position which he perils, and if the company superadds other dangers, they do so at their own risk.

18 If they placed freight incompatible with the safety of the passengers, having reference to the condition of the road and the injury resulted from that cause, they are liable in the absence of proof bringing home the knowledge of these facts to the plaintiff.

The court instructs the jury as above after refusing def't's prayer, and def't excepts.

By order of the court.

Defendant's 3d prayer.

The defendants pray the court to instruct the jury that the rule of damages in this action is a reasonable and just compensation for the injury sustained by the plaintiff, if the jury shall find the defendants are liable for any damages, and that compensation embraces the cost and expenses to which he was put by reason of said injury, the value of the time lost by reason thereof; and a just and reasonable allowance for the permanent injury sustained by him, in the effect it has and will have on his ability to maintain himself. He is also to be allowed for the pain and suffering which he endured, but this is

19 not to be made the pretext for punitive or exemplary damages.

Granted by the court.

Proceedings before the supreme court of the District of Columbia, holding a general term, commencing the first Monday of May, in the year 1866.

FRIDAY, *May* 25, 1866.

The court resumes its session according to adjournment. Present: Chief Justice Carter, and Justices Olin, Fisher, and Wylie.

FREDERICK STEIN
v.
THE WASHINGTON & GEORGETOWN RAILROAD Company. } 1,422, law.

Come, as well the plaintiff, by his attorneys, Messrs. Schmidt and Mattingly, as the defendant, by its attorney, Mr. Bradley, and thereupon, after argument of the motion aforesaid, because it seems to the court that there is no error in the proceedings of the circuit court; therefore, it is considered that said motion be, and the

20 same is hereby, overruled, and that the plaintiff recover against the defendant three thousand two hundred dollars, the damage aforesaid, in manner and form aforesaid found, and the further sum of $41 93 cents for his costs of suit, and that he have execution thereof.